IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

CONTEMPT PETITION NO.134 OF 2004
IN
NOTICE OF MOTION NO. 487 OF 2004
IN
B.C.C.C.L.C.SUIT NO. 4920 OF 2003

Mr.Sayed Munir ..Petitioner

Vs.

The Municipal Corporation
for Gr.Mumbai & Ors. ..Respondents

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Mr.P.N.Kulkarni for Petitioner
Mr.A.Y.Sakhare, Sr.Counsel with Mr.M.L.Patil and Mr.N.V.Walawalkar for Respondent nos.1, 3 to 6
Mr.V.S.Upadhyay with Mr.S.G.Surana for Respondent No.2.
Ms.Sindha Sreedharam with Shri.Sucha Sreedharan for Respondent nos.7,9,10 & 11.

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CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 11,2005

P.C.:

1. Heard Mr.Kulkarni, the learned counsel for the petitioner, Mr.Sakhare, the learned senior counsel appeared for the respondent no.1 Municipal Corporation and its officers, with Mr.M.L.Patil and N.V.Walawalkar.

2. Notice of Motion No. 4043 of 2003 was taken out by the petitioner in his L.C.Suit No. 4920 of 2003 filed before the City Civil Court at Mumbai and on

14.10.2003 the Court below noted that the plaintiff had received notice dated 13.9.2003 regarding his application having been submitted by the Corporation for consideration directing the defendants not to demolish the suit structures till 16.10.2003. The said order was directed to be continued subsequently until the disposal of the Notice of Motion and it was adjourned to 19.1.2004 on which date for want of time, the board was discharged and earlier order was continued and Notice of Motion was adjourned to 21.4.2004.

3. It is alleged that in the meanwhile on 20.1.2004, the hut bearing no.57 occupied by the petitioner's mother Smt.Fatimabi came to be demolished and therefore, this contempt petition for punishing the respondents.

4. Mr.Vijay Madhukar Balamwar, Assistant Municipal Commissioner who has been impleaded as respondent no.3 has filed affidavit in reply on behalf of respondent no.1 Corporation and has set out the factual events in para nos. 6 to 11 of his affidavit. It is clear from the said reply that the petitioner has already taken out another Motion for punishing the respondents under order XXXIX Rule 2A of C.P.C. and the same is pending before the Court below. It has been further pointed out that as per

record available with the Corporation, hut no.57 which was shown as T-23 in the Electoral Roll of 1995 which was occupied by the petitioner's mother was demolished on 20.1.2004 after she was allotted an alternative temporary accommodation by the Society on the condition that she would get permanent accommodation in the newly constructed building. It has been emphatically stated that the petitioner is not entitled for any alternative accommodation nor any permanent accommodation in the newly constructed building on his own and such a right is vested in favour of his mother and the Corporation would certainly discharge its obligations in her favour.

5. When the petitioner has taken out a separate Motion for punishing the respondents under Order XXXIX Rule 2A of C.P.C., there would be no reason to entertain this Contempt Petition and obviously the alleged contemnors cannot be punished more than once for the same offence, if any.

. Contempt Petition rejected.

[B.H.MARLAPALLE,J.]